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## LEGEND

Parent =

New HoldCo =

MergerCo =

Parent LLC =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 1 LLC =

Business A =

Business B =

Business C =

C Operations=

State X =

State Y =

a percent =

b percent =

c percent =

n shares =

Year 1 =

Name 1 =

Name 2 =

Dear :

This letter responds to a letter dated February 16, 2012 requesting rulings as to certain federal income tax consequences with respect to the proposed transaction described below (the "Proposed Transaction"). The information submitted in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the Distribution (defined in Step (vii) below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is

used principally as a device for the distribution of the earnings and profits of any distributing corporation or any controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any distributing corporation or any controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

## SUMMARY OF FACTS

Parent is a State X corporation and the common parent of an affiliated group of corporations filing a consolidated Federal income tax return. Parent has a single class of common stock outstanding ("Parent Common Stock"), which is publicly traded. Parent directly owns all of the equity of the following entities (among others), each of which is taxable as a corporation for Federal income tax purposes: Sub 1, Sub 2, Sub 3, Sub 4, Sub 6, Sub 7, Sub 8, Sub 9, Sub 10, Sub 11, Sub 12, Sub 13 and Sub 14. Parent also owns a percent of Sub 5, which is taxable as a corporation for Federal income tax purposes. Sub 1 owns the remaining b percent of Sub 5.

Parent operates three principal lines of business, Business A, Business B, and Business C. In Year 1, Parent and its subsidiaries sold C Operations, which related to Business B, to an unrelated buyer. Parent has submitted financial information indicating that the operations of each of Business A, Business B, and Business C has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years. Parent has determined, for what are represented to be valid business reasons, to separate Business B and Business C from Business A.

In connection with the Proposed Transaction (described below), Parent formed New HoldCo, a State X corporation. New HoldCo has a single class of common stock outstanding ("New HoldCo Common Stock"), all of which is directly owned by Parent. In turn, New HoldCo formed Controlled, a State X corporation, and MergerCo, a State X corporation. Controlled has a single class of common stock outstanding ("Controlled Common Stock"), all of which is directly owned by New HoldCo. Prior to the Holding Company Merger (defined below), New HoldCo, Controlled, and MergerCo did not and will not engage in any business activity, other than in furtherance of the Proposed Transaction, and held and will hold only nominal assets to facilitate their incorporation and preserve their existence as corporations. In preparation for the Contribution and the Distribution (each defined below), Parent, New HoldCo, and MergerCo have executed or will execute the Reorganization (defined in steps (i) and (ii) below).

## PROPOSED TRANSACTION

For what are represented to be valid business reasons, Parent proposes to undertake the following Proposed Transaction:

- (i) MergerCo has merged or will merge with and into Parent, with Parent surviving (the "Holding Company Merger"). In connection with the Holding Company

Merger, the shares of Parent Common Stock owned by Parent's shareholders were or will be converted automatically into New HoldCo Common Stock on a one-for-one basis, and New HoldCo became or will become the new holding company of Parent.

- (ii) Approximately one day after the Holding Company Merger, Parent converted or will convert to a State X limited liability company pursuant to the State X conversion statute, and was or will be named Parent LLC. Steps (i) and (ii) are, collectively, referred to as the "Reorganization." After the Reorganization and effective as of or prior to the date of the Distribution, Controlled will change its name to Name 2.
- (iii) Sub 2 and Sub 3 will be merged with and into Sub 4, with Sub 4 surviving.
- (iv) Sub 1 will convert to a State X limited liability company pursuant to the State X conversion statute, and will be named Sub 1 LLC. Step (iv) is referred to as the "Sub 1 Conversion."
- (v) Sub 1 LLC will distribute to Parent LLC all of the stock of Sub 5 held by Sub 1 LLC. Parent LLC will distribute to New HoldCo 100 percent of the stock of Sub 5 and Sub 6.
- (vi) New HoldCo will contribute 100 percent of the interests in Parent LLC to Controlled. At the time, Parent LLC's assets will include 100 percent of the stock of Sub 4, Sub 7, Sub 8, Sub 9, Sub 10, Sub 11, Sub 12, Sub 13 and Sub 14; all of the Business B assets owned through Sub 1 LLC; and all other assets owned by Parent LLC that relate to Business B and Business C (such assets, the "Contributed Assets"). Steps (v) and (vi) are, collectively, referred to as the "Contribution."
- (vii) New HoldCo will distribute 100 percent of the stock of Controlled to its public shareholders. Each shareholder will receive one share of Controlled in respect of each share of New HoldCo stock owned by such shareholder. Step (vii) is referred to as the "Distribution." Effective as of the date of the Distribution, New HoldCo is expected to change its name to Name 1.

In connection with the Proposed Transaction, New HoldCo and Controlled will enter into certain new agreements relating to the separation of Business A from Business B and Business C (the "Continuing Arrangements"). The Continuing Arrangements will include a tax sharing agreement, a transition services agreement, an employee matters agreement and certain additional continuing agreements regarding supplies and services.

## REPRESENTATIONS

Parent makes the following representations with respect to the Reorganization:

- (a) At all times prior to acquiring the assets of Parent in the Reorganization: (i) New HoldCo will have been engaged in no business activity, other than in furtherance of the Proposed Transactions; (ii) New HoldCo will have had no Federal tax attributes (attributes described in section 381(c)); and (iii) New HoldCo will have held no assets (except for holding: (x) a minimal amount of assets if such assets are required for the purpose of paying New HoldCo's expenses or required in order to maintain New HoldCo's status as a corporation in accord with state law; (y) all of the stock of MergerCo; and (z) all of the stock of Controlled).
- (b) For U.S. Federal income tax purposes, Parent LLC will be an entity disregarded as separate from New HoldCo under Treas. Reg. § 301.7701-2(a). In addition, New HoldCo has no plan or intention to make an election pursuant to Treas. Reg. § 301.7701-3(a) to treat Parent LLC as an association.
- (c) The shareholders of Parent will receive solely New HoldCo stock in the Reorganization.
- (d) The fair market value of the New HoldCo Common Stock that will be received by each of Parent's shareholders will be approximately equal to the fair market value of the Parent Common Stock surrendered in the exchange.
- (e) Immediately following consummation of the Reorganization, Parent's shareholders will own all of the outstanding New HoldCo Common Stock and will own such stock solely by reason of their ownership of Parent Common Stock immediately prior to the Reorganization.
- (f) Following the Reorganization, each shareholder of New HoldCo will hold the same percentage of stock in New HoldCo as the percentage of stock such shareholder previously held in Parent.
- (g) New HoldCo has no plan or intention to issue additional shares of its stock following the Reorganization.
- (h) Immediately following the consummation of the Reorganization (and immediately prior to the Contribution), New HoldCo will possess the same assets and liabilities as those possessed by Parent immediately prior to the Reorganization, except for assets used to pay expenses incurred in connection with the Reorganization (if any). Assets used to pay expenses of the Reorganization (if any) will constitute less than one percent of the fair market value of the net assets of Parent immediately prior to the Reorganization. No assets will be distributed in the Reorganization.
- (i) At the time of the Reorganization, Parent will not have outstanding any warrants, options, convertible securities or any other type of right pursuant to

which any person could acquire stock in Parent, other than warrants, options and rights issued under employee equity compensation plans.

- (j) New HoldCo has no plan or intention to reacquire any of its stock issued in the Reorganization; however, depending on market conditions following the Proposed Transactions, New HoldCo may conduct share repurchases pursuant to a board authorization to repurchase up to n shares of common stock, which repurchases are expected to meet the requirements of section 4.05(1)(b) of Rev. Proc. 96-30.
- (k) New HoldCo has no plan or intention to sell or otherwise dispose of any of the assets of Parent acquired in the transaction, except for dispositions made in the ordinary course of business or in connection with the Contribution and the Distribution.
- (l) The liabilities of Parent assumed (within the meaning of section 357(d)) by New HoldCo were incurred by Parent in the ordinary course of its business and are associated with the assets transferred.
- (m) Parent's shareholders, Parent and New HoldCo will pay their respective expenses (if any) incurred in connection with the Reorganization.
- (n) Parent is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

The following representations are made with respect to the Sub 1 Conversion:

- (o) New HoldCo (through Parent LLC) and Sub 1 will adopt a plan of conversion under State X law to convert Sub 1 into a limited liability company (the "plan of liquidation"), and the Sub 1 Conversion will occur pursuant to the plan of liquidation.
- (p) New HoldCo (through Parent LLC), on the date of adoption of the plan of liquidation, and at all times thereafter until the Sub 1 Conversion is completed, will be the owner for tax purposes of 100 percent of the single outstanding class of Sub 1 stock, and Sub 1 has no (and will have no) outstanding warrants, options, convertible securities, or other obligations that may be classified as equity for Federal income tax purposes.
- (q) No shares of Sub 1 will have been redeemed during the three years preceding the Sub 1 Conversion, and any intercompany gain previously realized with respect to the stock of Sub 1 or with respect to an asset to which the Sub 1 stock is a successor asset (within the meaning of Treas. Reg. § 1.1502-13(j)(2)), and not previously taken into account, will be taken into account immediately before the Sub 1 Conversion.

- (r) All distributions from Sub 1 to New HoldCo (through Parent LLC) pursuant to the Sub 1 Conversion will be made within a single taxable year of Sub 1.
- (s) When the Sub 1 Conversion occurs, Sub 1 will cease to be regarded as an entity separate from New HoldCo for Federal income tax purposes.
- (t) There is no plan or intention to undertake any action (e.g., an election to be treated as an association taxable as a corporation for Federal income tax purposes under Treas. Reg. § 301.7701-3, etc.), and no other circumstances will exist (e.g., the existence of a second regarded owner of a member interest) following the Sub 1 Conversion, that will prevent Sub 1 from being disregarded as an entity separate from New HoldCo (through Parent LLC) for Federal income tax purposes under Treas. Reg. §§ 301.7701-2 and 301.7701-3.
- (u) Sub 1 will not have acquired assets in any nontaxable transaction at any time, except for (i) acquisitions occurring more than three years prior to the Sub 1 Conversion and (ii) the acquisition of certain real estate assets pursuant to like-kind exchanges or involuntary conversions under sections 1031 or 1033.
- (v) Except as described above with respect to the C Operations, no assets of Sub 1 have been, or will be, disposed of by either Sub 1 or New HoldCo, except for dispositions in the ordinary course of business, dispositions occurring more than three years prior to the Sub 1 Conversion and dispositions pursuant to the Proposed Transactions.
- (w) Except in connection with the Proposed Transactions, the liquidation of Sub 1 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 1, if persons holding, directly or indirectly, more than twenty percent in value of the Sub 1 stock also hold, directly or indirectly, more than twenty percent in value of the stock in the recipient corporation after the Distribution. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of section 318(a), as modified by section 304(c)(3) following completion of the Distribution.
- (x) Prior to the Sub 1 Conversion, no assets of Sub 1 will have been distributed in kind, transferred or sold to Parent or New HoldCo, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to the Sub 1 Conversion.
- (y) Sub 1 will report all earned income represented by the assets that will be deemed distributed to New HoldCo such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.



- (z) The fair market value of the assets of Sub 1 will exceed its liabilities both at the time of the adoption of the plan of liquidation and immediately prior to the effective time of the Sub 1 Conversion.
- (aa) There is no intercorporate debt existing between Sub 1 and Parent or New HoldCo and none has been cancelled, forgiven or discounted, except for transactions that occurred more than three years prior to the Sub 1 Conversion.
- (bb) Parent is not, and New HoldCo will not be, an organization that is exempt from Federal income tax under section 501 or any other provision of the Code.
- (cc) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the proposed Sub 1 Conversion have been fully disclosed.
- (dd) At the time of the Distribution, the assets of Sub 1 that will be contributed to Controlled in the Contribution will comprise substantially less than c percent of the total assets of Controlled by value.

The following representations are made with respect to the Contribution and Distribution:

- (ee) New HoldCo and Controlled and the shareholders of New HoldCo will pay their respective expenses, if any, incurred in connection with the Contribution and the Distribution.
- (ff) Indebtedness, if any, owed by Controlled to New HoldCo after the Distribution will not constitute stock or securities.
- (gg) No part of the consideration to be distributed by New HoldCo will be received by a shareholder as a creditor, employee or in any capacity other than that of a shareholder of New HoldCo.
- (hh) No security holder of New HoldCo will receive any consideration in the Distribution.
- (ii) New HoldCo and Controlled will treat all members of their respective separate affiliated groups within the meaning of section 355(b)(3)(B) ("SAGs") as one corporation in determining whether the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (jj) The five years of financial information submitted on behalf of Business A conducted by the New HoldCo SAG is representative of the business's present operation, and with regard to such business, there have been no

substantial operational changes since the date of the last financial statements submitted.

- (kk) The five years of financial information submitted on behalf of Business B and Business C as conducted by the New HoldCo SAG prior to the Contribution and Distribution and to be conducted by the Controlled SAG after the Contribution and Distribution is representative of each business's present operation, and there have been no substantial operational changes in either business since the date of the last financial statements submitted.
- (ll) The New HoldCo SAG neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, the New HoldCo SAG has been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the Distribution.
- (mm) The New HoldCo SAG neither acquired Business B nor Business C, nor acquired control of an entity conducting Business B or Business C, during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, the New HoldCo SAG has been the principal owner of the goodwill and significant assets of Business B and Business C and the Controlled SAG will continue to be the principal owner following the Distribution.
- (nn) Following the transaction, the New HoldCo SAG and the Controlled SAG will each continue the active conduct of Business A (New HoldCo SAG) and Business B and Business C (Controlled SAG), respectively, independently and with its separate employees.
- (oo) The Distribution is being carried out for the following corporate business purposes and is motivated, in whole or substantial part, by one or more of such corporate business purposes: (i) to allow New HoldCo's management to focus on Business A, while allowing Controlled to obtain independent management that can focus on Business B and Business C; (ii) to allow New HoldCo and Controlled to raise capital more efficiently, allocate capital more appropriately and eliminate conflicts over capital decisions (including over capital structure); (iii) to facilitate research coverage and accurate valuations by analysts, and improve the ability of both New HoldCo and Controlled to use their stock as acquisition currency; and (iv) to allow both New HoldCo and Controlled to attract, compensate and retain management and key employees through an improved ability to offer equity-based compensation incentives.

- (pp) The Distribution is not being used principally as a device for the distribution of the earnings and profits of New HoldCo or Controlled or both.
- (qq) Immediately after the transaction (within the meaning of section 355(g)(4)), either (i) any person that holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)) will have held such an interest in such corporation immediately before the transaction or (ii) neither New HoldCo nor Controlled is or will be a disqualified investment corporation for purposes of section 355(g).
- (rr) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of New HoldCo stock entitled to vote, or 50 percent or more of the total value of shares of all classes of New HoldCo stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (ss) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on New HoldCo stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (tt) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in New HoldCo or Controlled (including any predecessor or successor of any such corporation).
- (uu) The total fair market value of the assets transferred to Controlled in the Contribution will be equal to or exceed the aggregate adjusted basis of those assets so transferred.
- (vv) The total adjusted basis of the assets transferred by New HoldCo to Controlled in the Contribution will equal or exceed the sum of the total liabilities assumed (within the meaning of section 357(d)), if any, by Controlled, plus any liabilities to which the transferred assets are subject.

- (ww) The total fair market value of the assets transferred by New HoldCo to Controlled in the Contribution will exceed the sum of (i) the total amount of liabilities assumed (within the meaning of section 357(d)), if any, by Controlled, (ii) the amount of any liabilities owed to Controlled by New HoldCo, if any, that are discharged or extinguished in connection with the Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain), if any, received by New HoldCo from Controlled in connection with the Contribution.
- (xx) The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.
- (yy) The fair market value of the assets of Controlled will exceed Controlled's aggregate basis in those assets immediately after the Contribution.
- (zz) The liabilities, if any, assumed (within the meaning of section 357(d)) by Controlled in the Contribution and the liabilities, if any, to which the assets transferred in the Contribution are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (aaa) New HoldCo will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Contribution and Distribution.
- (bbb) No intercorporate debt will exist between New HoldCo and Controlled at the time of, or subsequent to, the Distribution (other than short-term balances related to the shared costs incurred in carrying out the Proposed Transactions, which will be settled as soon as practicable following the Distribution).
- (ccc) Immediately before the Distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, New HoldCo's excess loss account with respect to the Controlled stock, if any, will be included in income immediately before the Distribution (see Treas. Reg. § 1.1502-19).
- (ddd) Payments made in connection with all continuing transactions, including the Continuing Arrangements, between New HoldCo (or any of its subsidiaries) and Controlled (or any of its subsidiaries) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (eee) No two parties to the transaction are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).

- (fff) Controlled will be a U.S. real property holding corporation (as defined in section 897(c)(2)) immediately after the Distribution.

### RULINGS

Based solely on the information submitted and the representations made, and conditioned upon Distributing's execution of the closing agreement attached hereto and made a party hereof, we rule as follows on the Reorganization:

- (1) For U.S. federal income tax purposes, the Reorganization will be treated as a transfer by Parent of its assets to New HoldCo in exchange for New HoldCo Common Stock and New HoldCo's assumption of the liabilities of Parent, followed by a liquidation of Parent in which the New HoldCo Common Stock was distributed to the shareholders of Parent in cancellation of their interests in Parent. The Reorganization will qualify as a reorganization within the meaning of section 368(a)(1)(F). Parent and New HoldCo will each be a party to the reorganization under section 368(b).
- (2) Parent will not recognize gain or loss on the transfer of its assets to New HoldCo in exchange for New HoldCo Common Stock and the assumption by New HoldCo of the liabilities of Parent. Sections 361(a) and 357(a).
- (3) New HoldCo will not recognize gain or loss on its receipt of Parent's assets in exchange for New HoldCo Common Stock and the assumption of Parent's liabilities. Section 1032(a).
- (4) Immediately after the Reorganization, New HoldCo's basis in each asset received from Parent will be the same as Parent's basis in the asset immediately before the Reorganization. Section 362(b).
- (5) New HoldCo's holding period of the Parent assets in the hands of New HoldCo will include the period during which Parent held such assets. Section 1223(2).
- (6) Parent will not recognize gain or loss on the distribution of the New HoldCo Common Stock to Parent's shareholders in exchange for each share of Parent Common Stock. Section 361(c)(1).
- (7) Parent's shareholders will not recognize gain or loss upon the receipt of New HoldCo Common Stock in exchange for Parent stock. Section 354(a)(1).
- (8) The basis of New HoldCo Common Stock received by each of Parent's shareholders will be the same as such shareholder's tax basis in its shares of Parent Common Stock surrendered in exchange therefor. Section 358(a)(1).
- (9) The holding period of each of Parent's shareholders in the New HoldCo Common Stock received will include the period during which such

shareholder held the shares of Parent Common Stock surrendered in exchange therefor, provided that the Parent stock is held as a capital asset on the date of the exchange. Section 1223(1).

- (10) As provided by section 381(c)(2) and Treas. Reg. § 1.381(c)(2)-1, New HoldCo will succeed to and take into account the earnings and profits (“E&P”), or deficit in E&P of Parent, at the effective time of the Reorganization. Any deficit in E&P of New HoldCo or Parent will be used only to offset E&P accumulated after that time.
- (11) Pursuant to section 381(a) and Treas. Reg. § 1.381(a)-1, New HoldCo will succeed to and take into account the items of Parent described in section 381(c) as of the date of the Reorganization. New HoldCo will take these items into account subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the Treasury Regulations thereunder.
- (12) The taxable year of Parent’s affiliated group will not end as a result of the Reorganization and such taxable year will continue with New HoldCo as the successor to Parent in its capacity as the common parent of the affiliated group of corporations of which Parent was the common parent. Treas. Reg. §§ 1.381(b)-1(a)(2) and 1.1502-75(d)(2)(i).
- (13) New HoldCo will continue to use the taxpayer identification number previously assigned to Parent. Rev. Rul. 73-526, 1973-2 C.B. 404.

Based solely on the information and representations submitted, and conditioned upon Distributing’s execution of the closing agreement attached hereto and made a part hereof, we rule as follows on the Sub 1 Conversion:

- (14) For U.S. federal income tax purposes, the Sub 1 Conversion will be treated as if Sub 1 distributed all of its assets and liabilities to New HoldCo (through Parent LLC) in complete liquidation of Sub 1 under section 332.
- (15) No gain or loss will be recognized by New HoldCo on the deemed receipt of the assets and liabilities of Sub 1 pursuant to the Sub 1 Conversion. Section 332(a).
- (16) No gain or loss will be recognized by Sub 1 on the deemed distribution of its assets and liabilities to New HoldCo (through Parent LLC) in the Sub 1 Conversion and 332 Distribution. Section 337(a).
- (17) The basis of each asset of Sub 1 deemed received by New HoldCo pursuant to the Sub 1 Conversion will be the same as the basis of that asset in the hands of Sub 1 immediately before the Sub 1 Conversion. Section 334(b)(1).

- (18) The holding period of each asset of Sub 1 deemed received by New HoldCo pursuant to the Sub 1 Conversion will include the period during which Sub 1 held such asset. Section 1223(2).
- (19) New HoldCo will succeed to and take into account the items of Sub 1 described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, 384 and the regulations thereunder. Section 381(a)(1) and Treas. Reg. § 1.381(a)-1.
- (20) Except to the extent Sub 1's E&P is already reflected in New HoldCo's E&P, New HoldCo will succeed to and take into account the E&P, or deficit in E&P, of Sub 1 as of the date of the Sub 1 Conversion. Section 381(c)(2)(A), Treas. Reg. §§ 1.381(c)(2)-1 and 1.1502-33(a)(2). Any deficit in the E&P of Sub 1 will be used only to offset E&P accumulated after the date of the Sub 1 Conversion. Section 381(c)(2)(B).

Based solely on the information and representations submitted, and conditioned upon Distributing's execution of the closing agreement attached hereto and made a part hereof, we rule as follows on the Contribution and Distribution:

- (21) The Contribution and the Distribution, taken together, will qualify as a reorganization within the meaning of section 368(a)(1)(D). New HoldCo and Controlled will each be "a party to the reorganization" within the meaning of section 368(b).
- (22) New HoldCo will not recognize any gain or loss on its transfer of the Contributed Assets to Controlled in exchange for Controlled stock and Controlled's assumption of liabilities in the Contribution. Sections 361(a) and (b), and 357(a).
- (23) Controlled will not recognize any gain or loss on its receipt of the Contributed Assets from New HoldCo in exchange for Controlled stock and Controlled's assumption of liabilities in the Contribution. Section 1032(a).
- (24) Controlled's basis in each of the Contributed Assets received from New HoldCo in the Contribution will equal the basis of such asset in the hands of New HoldCo immediately before the Contribution. Section 362(b).
- (25) Controlled's holding period in each of the Contributed Assets received from New HoldCo in the Contribution will include the period during which such asset was held by New HoldCo. Section 1223(2).
- (26) New HoldCo will not recognize any gain or loss on its distribution of the Controlled Common Stock to its shareholders in the Distribution. Section 361(c).

- (27) The New HoldCo shareholders will not recognize any gain or loss (and will not include any amount in income) upon the receipt of Controlled Common Stock in the Distribution. Section 355(a)(1).
- (28) Each New HoldCo shareholder's basis in the New HoldCo Common Stock and the Controlled Common Stock immediately following the Distribution will equal the basis of the New HoldCo Common Stock that the shareholder held immediately before the Distribution, allocated between the New HoldCo Common Stock and the Controlled Common Stock in proportion to their relative fair market values at the time of the Distribution in accordance with section 358(b)(2) and (c) and Treas. Reg. § 1.358-2(a)(2).
- (29) Each New HoldCo shareholder's holding period in the Controlled Common Stock received in the Distribution will include the holding period of the New HoldCo Common Stock with respect to which the Distribution is made, provided that the shareholder holds such New HoldCo Common Stock as a capital asset on the date of the Distribution. Section 1223(1).
- (30) Earnings and profits, if any, will be allocated between New HoldCo and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33.

#### CLOSING AGREEMENT

In connection with the issuance of this ruling letter, a closing agreement is being entered into between the Internal Revenue Service and the taxpayer with respect to certain of those issues affecting its tax liability on the basis set forth above. Pursuant to our practice with respect to such agreements, the closing agreement contains a stipulation to the effect that any change or modification of applicable statutes enacted subsequent to the date of this agreement and made applicable to the taxable period involved will render the agreement ineffective to the extent that it is dependent upon such statutes. This private letter ruling will become effective upon execution of the closing agreement.

#### CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, we express no opinion regarding: (i) whether the Proposed Transaction satisfies the business purpose requirement of §1.355-2(b); (ii) whether the Proposed Transaction is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and §1.355-2(d)); or (iii) whether the Proposed Transaction is part of a plan (or series of related transactions) under section 355(e). This agreement will become effective upon the execution of the closing



agreement.

Parent has not represented that neither Parent nor New HoldCo has been a United States real property holding corporation (as defined in section 897(c)(2)) at any time during the five-year period ending on the date of the Distribution, that New HoldCo will not be a United States real property holding corporation immediately after the Distribution, or that no foreign person will hold greater than five percent of the stock of New HoldCo on the date of the Distribution. Therefore, no opinion is expressed regarding the federal tax consequences to any greater than five percent foreign shareholder under section 897 as a result of the Distribution.

#### PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

In accordance with a power of attorney on file in this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

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Maury Passman  
Senior Technician Reviewer, Branch 1  
Office of the Associate Chief Counsel  
(Corporate)

cc: